

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
FARENTINO DEMETRI-DONT'E BAILEY SR.)	CASE NO. 09-20468-jpk
)	Chapter 7
Debtor.)	

KENNETH A. MANNING)	
Plaintiff,)	
v.)	ADVERSARY NO. 09-2204
FARENTINO DEMETRI-DONT'E BAILEY SR.)	
Defendant.)	

ORDER FOR HEARING REGARDING MOTION OF DEFAULT JUDGMENT
DENYING DEBTOR'S DISCHARGE ["MOTION"]

The record establishes that the defendant was properly served with summons and complaint, and failed to either appear or file a response to the complaint. Entry of Default was made on February 18, 2011, and the Motion was filed on June 21, 2011.

The complaint seeks two forms of relief. First, the complaint seeks to deny entry of the debtor's discharge in his Chapter 7 case on several grounds. Secondly, the complaint seeks recovery of a monetary judgment of \$5,409.00, representing the amount of a tax refund allegedly received shortly in advance of the filing of the petition which was not turned over to the trustee.

Most of the complaint is couched in conclusory terms. The primary facts established by the averments of the complaint and by the Affidavit of Kenneth A. Manning which accompanied the motion for default judgment are that the debtor at his Section 341 meeting on March 29, 2009 acknowledged that he received a \$5,409 income tax refund during the first week of February, shortly before the filing of the Chapter 7 case on February 18, 2009. The Trustee requested detailed information as to disposition of the proceeds of the refund check. Shortly after the Section 341 meeting, the Trustee received a hand-written note from the debtor with certain entries – the note has not been provided in the record. The Trustee sent letters to the

debtor's counsel on at least three occasions which demanded a written accounting of the use of the tax refund proceeds, including written documentation of the disposition of that refund. The Trustee received nothing other than the hand-written note provided to him by the debtor after the conclusion of the Section 341 meeting.

The complaint seeks to deny discharge on several grounds: Sections 727(a)(2)(A); 727(a)(2)(B); 727(a)(4)(A); 727(a)(3); and 727(a)(5). As stated, the complaint also seeks a monetary judgment in the amount of the tax refund.

The problem with the record at this point is that there is no evidence to establish that the debtor did anything with the tax refund other than what he testified to, i.e., spent the entirety of it prior to the filing of the Chapter 7 case. The debtor's failure to document to the trustee his disposition of the refund does not establish anything other than that he has failed to document the disposition of the refund to the trustee. Facts which would support an action under 11 U.S.C. § 727(a)(2)(A), 727(a)(2)(B), 727(a)(3) and 727(a)(4)(A) are totally lacking. While the record may be sufficient to establish grounds under 11 U.S.C. § 727(a)(5), there is no evidence in the record at this time that the debtor was in fact in possession of any of the funds derived from the tax refund on the date that he filed the petition, and there is therefore no factual basis at this time for the recovery of a monetary judgment against the debtor for the amount of the refund.

It Is Ordered that a hearing will be held on **November 18, 2011, at 11:00 A.M.**, pursuant to Fed.R.Bankr.P. 7055/Fed.R.Civ.P. 55(b)(2) to determine the manner of further proceedings in relation to the plaintiff's motion for default judgment.

Dated at Hammond, Indiana on October 28, 2011.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Attorneys of Record
Defendant